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July 12, 2016

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Ex Parte*** **Filing of the American Cable Association on Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42, and Commercial Availability of Navigation Devices, CS Docket No. 97-80**

Dear Ms. Dortch:

On July 8, 2016, Ross Lieberman, Senior Vice President of Government Affairs, and Mary Lovejoy, Vice President of Regulatory Affairs, American Cable Association ("ACA"), Micah Sachs and Cecilia Tai, Cartesian, Consultant to ACA (by telephone), Barbara Esbin, Cinnamon Mueller, Counsel to ACA, and Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Gigi Sohn, Counselor to Chairman Wheeler, Eric Feigenbaum, Office of Media Relations, and Scott Jordan, Chief Technologist, Ofifice of Strategic Planning & Policy. The purpose of the meeting was to discuss the views of smaller multichannel video programming distributors ("MVPDs") on the "App" proposal submitted by various large MVPDs and certain content providers.[1] During the meeting, ACA representatives made the following points:

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[1] Letter from Paul Glist, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket 16-42, CS Docket No. 97-80 (June 16, 2016).

- Smaller MVPDs are innovating in today's market in ways that align with the thrust of Section 629 of the Communications Act and the rules proposed by the Commission.[2]

  - Smaller MVPDs are not wedded to traditional business models of the MVPD industry – Because the provision of Internet service is a key business for smaller providers and their provision of MVPD service suffers from high and increasing programming costs and small and decreasing margins, smaller MVPDs are motivated to make their MVPD service available alongside over-the-top ("OTT") content and over alternative navigation devices, including third-party retail devices.

  - Smaller MVPDs have little, if any, set-top box rental margin – Because set-top box rentals produce little, if any, profit, smaller MVPDs have little stake in limiting access to their MVPD service to their rented boxes and are examining alternative types of technology and equipment to connect their customers.

  - Smaller MVPDs are offering innovative navigation devices and video content – In response to greater consumer demand and competitive pressures and the high cost of on-demand offerings, smaller MVPDs are increasingly deploying innovative set-top box software platforms (*e.g.* TiVo and Arris Moxi) that provide subscribers with access to OTT services alongside pay-TV offerings.

- Large MVPDs' willingness to subject themselves to the obligations of the "App" proposal is significant because it requires a sizeable financial investment with an uncertain return.

  - The "App" proposal will require a sizeable investment by large MVPDs – Large MVPDs will need to make sizable investments in at least four areas to implement the "App" proposal. First, they will need to deploy new IPTV infrastructure that transcodes linear and VOD content into a range of formats, separate from existing "Set-Top Box-centered" IPTV systems.[3] Second, they will need to develop and maintain the HTML5 application. Third, in many instances, they will need to upgrade plant to ensure sufficient bandwidth is available for this new, parallel

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[2] *In the Matter of Expanding Consumers' Video Navigation Choices*, MB Docket No. 16-42, *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18 (rel. Feb. 18, 2016) ("Navigation Device NPRM").

[3] ACA believes that even MVPDs currently operating IPTV systems will need to invest in a second IP system to deliver the IP-based adaptive video streaming that seems necessary to satisfy the "App" proposal.

video solution. Fourth, they will likely need to incur other costs, such as entering into one or more digital rights management licensing arrangements, establishing a metadata server to enable integrated search, and altering or establishing new business-to-business arrangements with programmers and third party device manufacturers. ACA estimates that, based on its current understanding of the proposal, larger MVPDs will need to expend upwards of approximately $2 million per system to implement the "App" proposal. The amount is likely to exceed ACA's estimated cost of more than $1 million per system that MVPDs would incur to comply with the proposal the Commission set forth in the Navigation Device NPRM.[4]

- Under the "App" proposal, large MVPDs will not obtain revenues by charging for their app. Because they will not charge for their app under the "App" proposal, large MVPDs will have more limited options to recover their investment.

- The costs imposed by the "App" proposal on large MVPDs are unprecedented. ACA is not aware of any Commission rules that have required MVPDs to incur the sizable per system costs needed to comply with the "App" proposal.

- The combination of larger MVPD adoption of the "App" proposal and ongoing small provider innovation will benefit consumers.

  - Large MVPDs' adoption of the "App" proposal complements the market-based innovative offerings of smaller MVPDs. ACA believes that by delivering the choice of app-based access to pay-TV content to most U.S. homes, development of the "App" solution by large MVPDs will complement the innovations that smaller MVPDs are offering their customers. In addition, because nearly all subscribers of smaller MVPDs have access to pay-TV services from DirecTV and DISH, compliance by large MVPDs with the "App" solution will benefit subscribers of smaller MVPDs by providing them with additional options for the reception of pay-TV services.

  - Smaller MVPDs will continue to innovate in the market without regulatory mandates. Smaller MVPDs need to respond to consumer demand and competition, and so are at the earliest stages of moving towards an IP platform

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[4] ACA continues to believe smaller MVPDs should not be subject to the Commission's "unlock the box" proposal because they are offering innovative software platforms and devices to their customers, they would need to incur a significant compliance cost without receiving offsetting revenues and because their participation in the program is not necessary for it to succeed.

> and perhaps an app-based solution. However, their pace of development, which will likely take as long as a decade or more to complete, is constrained by their limited scale and resources.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,

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cc: Gigi Sohn
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